IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29/04/2003

CORAM

THE HONOURABLE MR.JUSTICE K.GNANAPRAKASAM

CRP.No.2099 of 1998

Noor Ahmed ..... Petitioner

-Vs-

S. Ramasamy ..... Respondent

!For Petitioner: Mr. A.J.Abdul Razak

^For Respondent: Mr.A.K. Kumarasamy

Revision Petition filed against the judgement and decree, dated 23.6 .1998, passed in RCA.No.21/1997, on the file of the Principal Subordinate Judge, Erode, preferred against the order and decree, dated the 12th day of August, 1997, passed in RCOP.No.25/1994, on the file of the Rent Controller of Erode (Principal District Munsif), Erode.

:ORDER

1.The tenant, in RCOP.No.25/1994, on the file of the Rent Controller (Principal District Munsif), Erode, is the revision petitioner.

2.The respondent/landlord filed an application under Section 10(3)(c) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 for eviction of the tenant, on the ground that he requires the petition premises on the ground of additional accommodation to carry on his business.

3.The case of the landlord is that the petition premises was given on lease by the vendors of the landlord to the respondent for running an automobile spare parts business on a monthly rent of Rs.400/- and the tenancy is according to the English Calendar. The landlord had purchased the building on 16.2.1989 and on intimation of the said purchase, the tenant has been paying the rent to the petitioner. The landlord is running 3 flour mills, one for chillies, one for rice and wheat etc., and another for salt. He also installed 2 pulverisers, one for pulverising sugar and another for cocoanut. The landlord also installed a lathe for repairing the machineries and has been running these businesses in the adjoining tiled portions of the petition premises. The petitioner had developed his business and hence, he found it very difficult to run all the above machineries in the available space of 838

sq.ft. and with the great difficulty, he is running the machineries and he wanted to extend his machineries in the petition premises and the landlord is also not having accommodation for store room and office purpose and therefore, he badly requires the petition premises as an additional accommodation for his own use. To the request made by the landlord, the tenant refused to vacate and therefore, the landlord has filed the petition.

4.The tenant, in his counter, has admitted the tenancy, but, has stated that he is running an automobile spare parts business and also a 'Welcome Food Service'. The tenant also has stated that he paid a sum of Rs.10,000/- as advance to the petitioner, for which, the landlord has not issued any receipt. The tenant has been paying the rent regularly and on 31.1.1994, he had tendered the rent for the months of January and February, 1994 and the landlord refused to receive the rent and the said refusal was not bonafide. It is stated that the landlord demanded an exorbitant increase of Rs.1,000/per month as rent, for which the respondent did not agree and hence, the petitioner developed a grudge against the respondent and was threatening that he would vacate the tenant. It is also stated that the landlord made an attempt to evict the respondent on 8.3.1994 and the same was foiled and the tenant has also instituted a suit in OS.No.490/1994, on the file of the District Munsif Court, Erode, for permanent injunction and the same is pending. The petitioner's requirement of the petition premises is denied by the tenant. It is stated that the landlord is owning two other non-residential buildings on the same road, bearing Door Nos.168 and 169 and the petitioner is running his business at Door No.169 and his requirement for additional accommodation is not bonafide. The premises, where the petitioner has been carrying on his business, is more than sufficient. The petitioner is running only a grinding machines inside the premises and the present premises is more than enough for the said purpose and the petitioner does not at all require any additional accommodation. The existence of the pulverisers and flour mills and the lathe are connected for the purpose of filing this application.

5.Based upon the above said pleadings, and also by taking into consideration both the oral and documentary evidence, the Rent Controller has come to the conclusion that the landlord has failed to prove by satisfactory evidence that the accommodation available in his present premises is insufficient to carry on his business of flour mills and that his requirement of the petition premises for additional accommodation to extend his business is not bonafide and dismissed the petition. On appeal by the landlord, the Rent Control Appellate Authority has come to the conclusion that the requirement of the landlord is bonafide and that the tenant had set up a plea that he had entered into an agreement with the original owner of the property to purchase the same, but, failed to prove the same and also the defence set up by the tenant that he had also paid Rs.10,000/- as advance to the landlord was also not proved and that the machineries, which are in use, required more place and that therefore, the requirement of the landlord is bonafide and allowed the appeal. Aggrieved by the same, the tenant has preferred this civil revision petition.

6.Heard the learned advocate for the revision petitioner and the respondent.

7.The learned advocate for the revision petitioner/tenant has submitted that in the petition premises, the tenant has been carrying on his automobile spare parts business and also a 'Welcome Food Service' for a long time and the premises, in which the landlord has been carrying on his business, is more than sufficient to carry on his business and the landlord does not at all require the petition premises as additional accommodation and only with a view to rake up the rent, the landlord has filed this application and there is no bonafide requirement on the part of the landlord.
8.On the contrary, the learned advocate for the respondent/landlord would contend that he was running 3 flour mills, one for chillies, one for rice and wheat, etc. and another for salt and he also installed 2 pulverisers, one for pulverising sugar and another for cocoanut and also installed a lathe for repairing the machineries and is running the said business in the tiled portion of the petition premises and with all difficulties, he has been running all the above said machineries in the space of 838 sq.ft. and he feels very difficulty in running these machineries. In order to extend the machineries, the petition premises is very much required and the requirement of the petition premises as additional accommodation is bonafide.

9.The learned advocate for the tenant would further contend that the landlord sought for additional accommodation under Section 10(3)(a)(c) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, which states, "A landlord, who is occupying only a part of a building, whether residential or non-residential, may, notwithstanding anything contained in clause (a), apply to the Controller for an order directing any tenant occupying the whole or any portion of the remaining part of the building to put the landlord in possession thereof, if he requires additional accommodation for residential purposes or for purposes of a business which he is carrying on, as the case may be" and there is a proviso under clause (e), which states, "Provided that, in the case of an application under clause (c), the Controller shall reject the application if he is satisfied that the hardship which may be caused to the tenant by granting it will outweigh the advantage to the landlord." By pointing out the said proviso, it is argued on behalf of the tenant that the Rent Controller as well as the Appellate Authority should have given a finding with regard to the hardship that would be caused to the tenant, whether it would outweigh the advantage to the landlord or vice-versa and in the absence of any such finding, any order that has been passed by the Rent Controller or the appellate authority is not sustainable. He has also submitted that neither the Rent Controller nor the appellate authority had applied his mind and passed an order to that effect and in the said circumstances, the landlord is not entitled to succeed.

10.The tenant has relied upon the following judgements:-

11.In K.A. Loganatha Naicker Vs. S.R.Balasundaram Mudaliar (1974-IIMLJ-256), (T.Ramaprasada Rao, J, as he then was), has held, "3. ?? The common features, which are to be taken notice of by the Controller and the appellate authority, while dealing with such application, are that the Controller or the appellate authority as the case may be, should firstly be satisfied that the claim of the landlord is bonafide and if he is so satisfied, shall make an order directing the tenant to put the landlord in possession of the part of

the building for the possession of which the application for additional accommodation has been filed. If the Controller on the appellate authority is not so satisfied, then he shall make an order rejecting the application. The above special feature, in an application for such an additional accommodation under Section 10(3)(c), is subject to the proviso to Section 3(e) of the Act. The proviso says that in cases where an application is made by a landlord for possession of a part of the building, whether residential or non-residential, when he is in possession of the other part of the building, then the Controller shall reject the application if he is satisfied that the hardship which may be caused to the tenant by granting it will outweigh the advantage to the landlord. The further proviso to this sub clause enables the Controller to give the tenant a reasonable time for putting the landlord in possession of the part of the building asked for and to extend the said time so as not to exceed three months in the aggregate. The crucial aspect, therefore, which according to me could be characterised as a special incident in matters arising under Section 10(3)(c), is that there should be a categorical finding by the statutory authorities that the hardship which may be caused to the tenant by granting it will outweigh the advantage to the landlord. The special prescription is not to be considered as otiose or as an irrelevant appendage in the statute. It has been specially provided for so as to avoid unnecessary hardship to the tenant, as in the case under consideration, the landlord is only seeking additional accommodation in the same premises, whether for residential or non-residential purposes. Therefore, it becomes absolutely imperative for the authorities, in cases arising under Section (3)(c) of the Act, to give a specific finding whether the hardship which the tenant is likely to suffer would outweigh the advantage to the landlord or vice versa. Unless this aspect is noticed and adjudged upon by the statutory authorities, there is no complete enquiry as the statute contemplates in regard to the petitions arising under Section 10(3)(c)."

12.In Purushottam Das Vs. The VIII Additional District & Sessions Judge, Allahabad and others (1977-1-SCC-451), Section 21 and Rule 16 and proviso to that section under U.P. Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, came up for consideration. In the above said case, the landlord filed an application for eviction of the tenant from the premises in their occupation on grounds specified in clauses (a) and (b) of Section 21, Sub section (10) of the U.P. Buildings (Regulation of Letting, Rent, and Eviction) Act, 1972, on the ground of bonafide requirement. There was also proviso to Section 21, which reads, "Provided also that the prescribed authority shall, except in cases provided for in the Explanation, take into account the likely hardship to the tenant from the grant of the application as against the likely hardship to the landlord from the refusal of the application and for that purpose shall have regard to such factors as may be prescribed. In view of this proviso, it is now obligatory on the prescribed authority and the appellate authority to take into account the comparative hardship of the landlord and the tenant and for that purpose to have regard to such factors as may be prescribed by the Rules in deciding whether or not to pass an order of eviction. "

13.In Ms.Children's Choice, represented by its Partner Mr. Lakshmichand Shamjee (1982-1-MLJ-411), (T.N. Singaravelu, J.), eviction was sought for

additional accommodation under Section 10(3)(c), wherein it was held, "It has been repeatedly pointed out that if the bonafides of the landlords had been proved, the relative hardship of the parties in the event of eviction should also be considered before ordering eviction. It was submitted that if the tenant was thrown out of the premises, his business would be ruined and the disadvantages that would be caused to the tenant in the event of eviction would far outweigh the marginal advantage that might accrue to the landlords by the proposed expansion of their business. Though detailed evidence was not let in on either side with respect to their relative advantages and disadvantages, the facts stated speak for themselves and the tenant had established his business in the premises from the year 1970 and the hardship that would be caused to the tenant in the event of eviction would be relatively greater. In this view of the matter also, the landlords had to fail."

14.In Radhakrishnan Vs. Seethalakshmi (1988-1-LW-67), (Sivasubramaniam, J.), it was held, "Section 10(3)(e) of the Act, contemplates that the landlord should prove that the hardship, which may be caused to the tenant by evicting, it will outweigh the advantage to the landlord. The landlord should fail in this revision petition, because he has not at all pleaded in the eviction petition about the relative hardship that would be caused to the parties nor proved the fact that the relative hardship would be more on his part than on the part of the tenant. Section 10 (3)(e) Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 contemplates that the landlord should prove that the hardship which may be caused to the tenant by granting it will outweigh the advantage to the landlord. Though the petitioner offers to let in evidence on this aspect, I feel that it cannot be allowed at this stage. On this ground alone the eviction petition should be dismissed."

15.In R.Krishnaswamy Vs. N.Arumugam (1993-1-MLJ-122) (Thanikkachalam, J., as he then was), it was held, "In a petition for eviction filed under Section 10(3)(c) of the Act, the landlord should clearly state that he required the petition premises by way of additional accommodation. But, according to the proviso, the Controller shall reject the application if he is satisfied that the hardship which may be caused to the tenant by granting it will outweigh the advantage to the landlord. In order to decide this question of hardship, there must be proper pleadings in the petition. If the hardship is not pleaded in the petition, that is fatal to the petition."

16.In B. Kandasamy Reddiar Vs. O. Gomathi Ammal (1999-1-MLJ-123), (M.K.Mukerjee and S.Saghir Ahmed, JJ.), the landlord sought for eviction under Section 14(1)(b) and 10(3)(c) and 10(3)(e) of the Act. As far as the ground under Section 14(1)(b) is concerned, the finding was held to be correct, since the landlady does not intend to demolish the building. It was held, "the appeals must be allowed for the simple reason that in disposing of the revision petitions, the High Court did not at all take into consideration the first proviso under clause (e) of Section 10(3) under which the Rent Controller should reject the application (for eviction) if he is satisfied that the hardship which may be caused to the tenant by granting eviction will outweigh the advantage to the landlord. The consideration of the above proviso is mandatory. The mandatory requirement of the said proviso has not

been adverted to by the High Court. Hence, matter remitted back for fresh consideration."

17.Per contra, the learned advocate for the respondent/landlord relied upon the following judgements:-

18.It is the contention of the learned advocate for the landlord that it is not necessary to plead in the petition itself about the relative hardship, if there are sufficient materials to make out a case to arrive at the hardship that would be caused to the tenant or viceversa.

19.In the case of Hiralal Moolchand Doshi, Vs. Barot Raman Lal Ranchhoddass (dead) by LRs (AIR-1998-SC-1449), it was held, "In a suit for eviction on the ground of bonafide personal requirement, the landlord is not supposed to have pleaded his own comparative hardship in the plaint itself. Section 13(2) comes into play at the stage when the court is satisfied that the ground contained in Clause (g) of sub section (1) of Section 13 has been made out. It is at that stage that the court has to examine the question of comparative hardship. It is thus not necessary to plead in the plaint itself. Often the parties at the stage of recording of evidence of bonafide personal requirement also lead evidence as to the comparative hardship of the landlord or the tenant. But, such averments are not required to be pleaded in the plaint itself to give cause of action to the landlord to enable him to file a suit for eviction of the tenant on the ground of his bonafide personal requirement."

20.In Nilgiris Cooperaitve Marketing Society, rep. by its Secretary, Mr.K. Halan, Vs. C.T. Uthandi, (1998-II-MLJ745), R.Balasubramanian, J., after taking into consideration several rulings cited for and against the necessity of pleadings in a petition, ultimately held, "7. ? In the case on hand also, I find that there is no pleading on the side of the landlord regarding the relative hardship, yet the tenant has chosen to plead in detail on that aspect. Oral evidence is available on both sides on the issue of relative hardship and both the courts below have considered it and come to the conclusion that the relative hardship is in favour of the landlord. Under these circumstances, I am of the opinion that want of pleadings in this case on the part of the landlord regarding the relative hardship does not affect his case and in any event no prejudice to the tenant has been caused. Therefore, the argument of the learned counsel for the revision petitioner that the Rent Control petition has to be dismissed solely on that ground cannot be sustained."

21.In G.R. Ragupathy Vs. Dr.K.Sankar, etc. (1996-2-LW-494) (S.S. Subramani, J.), it was held, "The absence of plea in the Rent Control petition under Section 10(3)(a)(iii) would not entail in the dismissal of the Rent Control petition itself. It was held, "8. I cannot agree with the said submission of the learned counsel for more than one reason. The contention of lack of pleadings was not raised before the Authorities below, and I further

find that the lack of pleadings, if any, has not prejudiced the case of the tenant, petitioner herein, in any way. The object of pleading is only to put the parties on notice, of the real matter in issue. But, if the parties are already aware of the real matter in issue and they have also joined in issue over the same, the lack of pleadings can never be treated as a ground to reject the claim. Pleadings before Rent Controller cannot be given that much of importance given to pleadings in a suit before Civil Court. Proceeding before a Rent Control Court is summary in nature and the provisions of the Code of Civil Procedure are not fully made applicable to the extent provided under the statute. We must further note that the Rent Control Court is not a Civil Court and the Act itself is more or less a self-contained Code, so far as the relationship of landlord and tenant is concerned." "10. Learned counsel for the petitioner also submitted that unless there is a pleading that the landlord or his son has no other building of their own, the statutory conditions or qualifications to file an eviction petition are not fulfilled and, therefore, the tenant is not expected to answer the same. But, unfortunately for the petitioner, I find that the tenant has anticipated the case of the landlord, and in paragraph 9 of the counter, he himself has stated that the petitioner has other buildings of his own and therefore, he has not satisfied the statutory conditions. So, he himself is aware of the qualifications to seek eviction, and that is why, he wanted the eviction petition to be rejected on the ground that the respondent/landlord has got

other buildings of his own. When he himself is aware of the real matter in dispute, the lack of pleadings, even if any, is not prejudicial to his interest."

22.The case of SVM.Nagavairava Sundaram Vs. S. Bageerathan and another (1999-II-MLJ-28), arises under Section 10(3)(c) of the Pondicherry Buildings (Lease and Rent Control) Act (V of 1969). It was held by this Court (S.S.Subramani, J.), "One of the main arguments advanced by the learned senior counsel for the revision petitioner was that the landlord has not taken any pleading regarding relevant hardship and that itself is sufficient to dismiss eviction petition. In fact one of the points enumerated for consideration after remand was, relative hardship of the parties. Both the parties and the rent control court are bound by the order of remand. What the learned judge held was that the approach by the appellate authority regarding relative hardship was not correct, and the consideration should have been as stated in the order of remand, and it was on the basis of this direction the Rent Controller was expected to decide the matter. Lack of pleading as it is now argued by the learned senior counsel for the revision petitioner may not be a ground for dismissal of the eviction petition. In view of the order of demand, the very contention is barred by res judicata. The purpose of pleading is only to satisfy the principles of natural justice i.e. the opposite party must be made known about the case which he has to meet. If the opposite party himself is aware of what he has to plead and prove, and joins in issue with the landlord, and he has no case of any prejudice even if there is lack of pleading in the rent control petition, no rent control petition could be dismissed on the ground of this technicality."

23.In Ameena Beebi alias Jamurthu Begam Vs. P.K. Khaja Mohideen (2000 -II-MLJ-196), (K.Sampath, J.) had considered the case of eviction sought for under Section 10(3)(c) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 and after considering several rulings cited for and against, has observed, "My reading of the relevant provisions is justified will be evident from the decision of the Supreme Court in B.Kandasamy Reddiar Vs. O. Gomathi Ammal (1998-SCC-138) and J. Jermons Vs. Aliammal and others (1999-7-SCC-382), where the Supreme Court with particular reference to the Tamil Nadu Act after referring to proviso to Section 10(3)(e) of the Act, held that, "the consideration of the proviso is mandatory". In the other decision of the Supreme Court, it has been held as follows, "The authority, who considers the eviction petition under clause (c) of Section 10(3) of the Act has to record the finding under the provision and in the absence of such a finding the order of eviction cannot be sustained." The learned judge proceeds, "Thus, the emphasis is more on the duty of the authorities than on the pleadings and in any event, after the decision of the Supreme Court in Hiralal's case (Air-1993-SC-1449), it cannot be held that the specific pleadings regarding comparative hardship is a mandatory requirement."

24.Let us see our case, whether there are pleadings and materials to satisfy the proviso to clause (e) of Section 10(3) with regard to the relative hardship that would be caused to the parties.

25.In paragraph 8 of the petition, the landlord has stated,
"The business of the petitioner is now well developed and he find it very difficult to run all the above machineries in the available space of 838 sq.ft. and with the great difficulty, he is running the machineries."
To counter this difficulty expressed by the landlord, the tenant in his counter, in para 7, had denied the difficulty of the landlord in running the machineries. In para 8 of the counter, he has stated, " The premises, wherein the petitioner is carrying on his business is more than sufficient". These statements in the petition and in the counter are more than sufficient to arrive at a conclusion that the landlord expressed his difficulty and hardship in carrying on his business and the same was denied by the respondent. No doubt, the hardship is not stated in so many words, but, there are enough materials in the petition and in the counter to arrive at a conclusion that the advantage that would be accrued to the landlord would outweigh the

hardship that would be caused to the tenant and only in those circumstances, the appellate authority has also accepted the case of the landlord and allowed the petition.

26.As far as the specific pleadings are concerned, as it is a rent control proceedings, which are summary in nature, the opinion expressed by the learned Judge of this court (S.S.Subramani, J.), in G.R. Ragupathy Vs. Dr.K.Sankar, etc. (1996-2-LW-494) appears to be more proper and relevant, which states, "The contention of lack of pleadings was not raised before the Authorities below, and I further find that the lack of pleadings, if any, has not prejudiced the case of the tenant, petitioner herein, in any way. The object of pleading is only to put the parties on notice, of the real matter in issue.

?. We must further note that the Rent Control Court is not a Civil Court and the Act itself is more or less a self-contained Code, so far as the relationship of landlord and tenant is concerned." The said observation was also referred to and accepted by another learned Judge of this court (R. Balasubramaniam, J.) in Nilgiris Cooperaitve Marketing Society, rep. by its Secretary, Mr.K. Halan, Vs. C.T. Uthandi, (1998-II-MLJ7 45) and the very same view is also reiterated by another learned Judge of this Court, (K.Sampath, J.) in the case of Ameena Beebi alias Jamurthu Begam Vs. P.K. Khaja Mohideen (2000-II-MLJ-196). I am of the view that the materials in the petition and the counter are sufficient to arrive at a conclusion, whether there is enough compliance of the proviso to clause (e) of Section 10(3)(c) of the Act. In my opinion, the statement made in the petition and the denial made in the counter are more than sufficient to find out the requirement of the above said proviso and the landlord made out a case that his requirement is bonafide and the said fact is not in dispute and there are enough materials to satisfy the proviso also.

27.As a matter of fact, the tenant in this case, has not raised the lack of pleadings before the appellate authority and he has taken such a plea only before this court. As the landlord and the tenant have already aware of the real matter in issue and they have also joined in issue, the lack of pleadings, if any, can never be treated as a ground to reject the claim at this stage. As it has been rightly observed by this court and also by the Apex Court that the pleadings cannot be given that much of importance, as it has to be given before a Civil Court and that the proceedings before the Rent Controller is only summary in nature and the provisions of the Code of Civil Procedure are not fully made applicable to the extent provided under the statute. When it is made out that the parties know, what for they are fighting and when there are materials to arrive at a conclusion, that the parties have joined in issue with regard to the nature of eviction, that is sufficient to come to the conclusion that the parties had ample opportunity to put forth their respective claims. Further more, in this case, the learned advocate for the revision petitioner has not submitted any hardship that had been caused to the tenant. The main object of the proviso to clause (e) is that either party should not be taken unaware of the proceedings and when the parties have joined in issue, with regard to the real nature of things, it is more than enough to come to a conclusion, with the available materials. I further wish to add that the proviso in the Act is only a complimentary i.e. an additional ground, on which, both the landlord and the tenant could vest their case. If the parties have not taken advantage of that additional ground provided under the Act, it cannot be agitated before this revisional court. Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, under which revision has been filed , speaks, " The High Court may, on the application of any person aggrieved by an order of the appellate authority, call for and examine the record of the appellate authority, to satisfy itself as to the regularity of such proceeding or the correctness, legality or propriety of any decision or order passed therein and if, in any case, it appears to the High Court that any such decision or order should be modified, annulled, reversed or remitted for reconsideration, it may pass orders accordingly."

28.As it has been held in several decisions of this court, as well as by the Supreme Court that though the language used in Section 25 of the Act appears to have given wide power, it is essentially a revisional jurisdiction and supervisory in nature. The statute itself provides a distinction between an appeal and a revision. So, naturally it presupposes that Section 25 should not be made use of to convert this court as one that of appellate court for rehearing the entire matter. The power also should not be used merely because the revisional court does not agree with the findings of fact rendered by the authorities below. Even in regard to the conclusion, interference of this court is possible only in cases where the conclusion is reached by taking into consideration irrelevant materials or the authority concerned omitted to consider relevant materials. Merely because another conclusion or opinion is possible or could be formed, it is not a ground to hold that the decision of the appellate authority is wrong and the same is liable to be set aside.

29.In the light of the rulings referred to above and also my findings that there are enough materials in the petition and the counter to arrive at a conclusion that both the landlord and the tenant were conscious of the fact about the nature of proceedings, to which they are parties and no prejudice has been made to the tenant, I do not feel that the order passed by the appellate authority warrants interference by this court.

30.In the result, the civil revision petition is dismissed. No costs.

Index: Yes

Web: Yes
srcm

To:

1.The Principal Subordinate Judge, Erode
2.The Rent Controller of Erode (Principal District Munsif), Erode
3.The Record Keeper, VR Section, High Court, Madras

□